



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Donald M. Besemer, et al.

Examiner: David A. Redding

Serial No: 10/789,678

Art Unit No.: 1744

Filing Date: February 27, 2004

Attorney Docket No. 1067.1H

Title: **Bioarray Chip Reaction
Apparatus and Its Manufacture**

RESPONSE TO RESTRICTION REQUIREMENT

Sir,

In response to the Restriction Requirement dated March 2, 2005, Applicants offer the following remarks.

The Restriction Requirement presents two claim groupings. Group 1 claims methods and devices for processing biological materials and Group 2 claims an apparatus for mixing fluids. The Restriction Requirement also states that the pending claims are 1-87. Applicants refer the Examiner to the Preliminary Amendment filed February 27, 2004 in which claims 1-87 were cancelled and claims 93-140 substituted therefore. Applicants presented the new claims in order to preserve their rights under 35 USC§135 (b) as they copied the claims from U.S. Patent Publication 2003/0040011 which published February 27, 2003. This patent publication has since issued as U.S. Patent No. 6,682,702 ('702) on January 27, 2004 and the published claims issued in un-amended form in the '702 patent. Consequently, the claims subject to the restriction requirement are no longer pending, but are copied from the above patent publication.

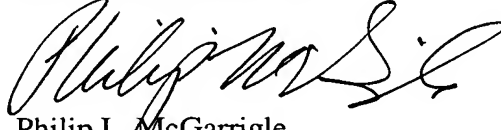
With the present response, Applicants hereby provide a new set of claims (141-163). Applicants request that the Examiner reconsider the outstanding restriction requirement in light of these claims.

Additionally, U.S. Patent Publication 2003/0040011 has issued as U.S Patent No. 6,682,702. Applicants hereby provide a Request for Declaration of interference between the present application and U.S. Patent No. 6,682,702 along with supporting documents.

Applicant reserves the right to re-present non-elected claims in a divisional, or other related application.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account 01-0431.

Respectfully submitted,



Philip L. McGarrigle
Reg. No.: 31,395

Date: May 2, 2005

Customer No.22886
Affymetrix, Inc.
3380 Central Expressway
Santa Clara, CA 95051
Phone: 408-731-5000
Facsimile: 408-731-5392